

The 22nd December, 1994

No. 14/13/87-6Lab./1008.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Haryana Drinks (P) Ltd., Asthal Bohar (Rohtak) *Versus* Satpal.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 161 of 1988

Between

SHRI SATPAL, C/O SHRI SUNDER SINGH, GENERAL SECRETARY, CITU, DISTRICT COMMITTEE,
HOUSE NO. 36, SUGAR MILLS COLONY, ROHTAK .. Workman.

and

THE MANAGEMENT OF M/S HARYANA DRINKS (P) LTD., ASTHAL BOHAR, DISTRICT ROHTAK.

Present :

Shri R. C. Siwach, Authorised Representative for the workman.

Shri M. Kaushal, Authorised Representative for the management.

AWARD

In exercise of the powers conferred by sub-clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department Endorsement No. SOV/ID/Roh./154-87/14869-74, dated the 11th April, 1988:—

Whether services of Shri Satpal have been terminated/retrenchment is justified and in order ?
If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and filed the claim statement that he worked as premix operator in the respondent factory from March, 1985 to 24th November, 1986 at the pay of Rs. 640 P. M. but on 25th November, 1985 he was not allowed to work in the factory by Shri G. S. Takkar, Public Relation Officer on the ground that as he was the member of union, therefore, he was not allowed to work in the factory. On the 28th November, 1986 the workman received a letter from the management dated 24th November, 1986, stating that his services were terminated. The management had compromised the matter regarding the money of the workers before Labour Officer, Rohtak on 24th November, 1986. The management have contravened the Section 25-F of the I.D. Act. The workman had been going to the management to allow him to work but he was not allowed to work. Hence this claim petition is filed that he is liable to be reinstated with continuity of service and with full back wages.

3. The management appeared and filed the written statement that respondent is a unit manufacturing Soft Drinks under the lease. The water supply at Rohtak is most erroneous one the sub soil water is not fit for the use of any soft drinks and only the water received through municipal Committee or the canal water is used for manufacturing the soft drink. The scarcity of water supply in this industrial belt is well known on account of non-availability of water during particular times and the manufacturing process is being suspended. The respondent have not their own testing laboratory in the factory for testing nature of the water. The management started the factory at Rohtak in the month of March, 1983 on trial basis. Number of difficulties were faced by the respondent the applicant joined the services of the company in the year, 1985 in unskilled category and was posted in the hail for doing unskilled job crates from one place to another. The factory was closed since water was not available and he was paid off on 24th November, 1986. The factory re-started the work in the the month of March, 1987 and the applicant raised the demand notice on 5th December, 1986 and the factory was closed on account of reason given above. The applicant was given the right of the re-employment when the factory was re-started in the month of March, 1987. But the applicant did not report for duty. After the comments were filed by the management the claim of the applicant was rejected by the Government,—*vide* letter dated 26th November, 1987. The applicant filed an affidavit submitted on 19th December, 1987 containing same

facts without mentioning that he was member of the union. This Court has no jurisdiction to adjudicate upon the matter as the reference made by the Government of this Court is not tenable. The reference is bad in law. The applicant is gainfully employed since his services were retrenched by the management and hence the claim petition be dismissed.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues were framed :—

- (1) As per terms of reference ?
- (2) Whether the reference is bad in law ? OPR.
- (3) Whether the workman has gainfully employed ?
- (4) Relief.

5. My findings on the above issues with reasons thereof are as under :—

Issue No. 1 :

6. The workman has come into witness-box as WW-1 and also examined Mahabir Singh as WW-2 who deposed that he was also serving the respondent factory. He also made statement that he had also been dispelled from services. Wazir Singh as WW-3 also co-worker of the factory. The management has tendered into evidence Ex. MX-1 to MX-5 and examined Shri S.S. Budhwar as MW-1 and thereafter the evidence was closed.

7. It is admitted fact that the workman had worked for more than 240 days in a year. Now the question remained for adjudication by me whether the management had rightly terminated the services of the workman or not. The case of the management is that in the year, 1986 the factory had stopped production because the water to be used was found to unfit for pure drinks by the management. And as such all the workers were retrenched. Ex. W2 is the order of the respondent addressed to the Labour Officer, Rohtak informing him that on 20th March, 1987 24 workers given here below the list had been inducted into the service. Wherein the applicant Sat Pal was not one of 24 workers who has rejoined the services. On this 25 workers as listed is Ex. W-1 to Labour Officer, Rohtak that management had not taken them on the duty Sat Pal is one of them.

8. Ex W-3 is complaint received by Labour Officer and sent to the management regarding not taking them on duty. Ex. W-4 is the proceedings orders before the Labour Officer, Rohtak on 20th April, 1987 to the effect that management was called and the management represented that except five persons the management is not able to observe the remaining workers. Ex. W-5 is the complaint made to D.C. regarding not taking of 29 labourers who were sitting outside to do some work otherwise the position in the management factory shall become explosive. Ex. W-6 is the complaint made by the General Secretary of Thumsup Workers Union made against Haryana Drinks in that regards. Ex. W-7 is the complaint made by Thums Up workers to D.C. Rohtak. Ex. W-8 is the representation made to management alleging that the applicant workman was confined in a room and told him that was the order passed by C.S. Takkar. Ex. W-9 is the complaint made to the Chief Minister Haryana. Ex. W-10 is the note given to Labour Officer-cum-Conciliation Officer, Rohtak to Haryana Drinks regarding requiring of the management along with the workers. The note dated 9th February, 1987 is that Shri C.S. Takkar present but no worker was present. The workman had appeared on 5th February, 1987 and the proceedings continued before Labour Officer-cum-Conciliation to 17th March, 1987. Ex. W-11 and 12 are note sent by Labour Officer-cum-Conciliation Officer to the D.C. Rohtak. Ex. W-13 is also letter written by Labour Officer-cum-Conciliation Officer but I am not able to read all the three letters. On the back the note Ex. W-13 is regarding proceedings recorded before the Labour Officer and giving note that the management is not ready to take workers on duty. Ex. W-14 also does not convey anything and also not to read into. Ex. W-15 is also letter written by L. O. C. O., Rohtak to the management. Ex. W-16 is the complaint made by the workers to the management.

9. The management examined documentary evidence by way of producing Ex. M-1 photostate copy of letter from management to Shri Man Bahadur intimating that he was very mischievously concealed your absence for which otherwise he was responsible for disciplinary action. Ex. M-3 is demand notice from Haryana Drinks (P) Ltd. to the Conciliation Officer, Rohtak in respect of Mr. Man Bahadur dated 5th December, 1986 comments thereof. Ex. M-5 is the letter from Dharambir, General Secretary and a note given thereof that Jai Pal Singh was asked to come on the job but he refused, but the factory is still to ready to take him on the job. The note is given by the Labour Officer is dated 4th December, 1986. Ex. M-7 is the letter from management to Labour Officer, Rohtak to the effect that Shri C.S. Takkar is lying ill

and he is not able to appear before Labour Officer. Ex. M-6 is the letter from Labour Commissioner to Labour Inspector intimating that the factory has not started the work so far. Ex. WW-2/3 is the photo copy of letter from Registrar Trade Union to General Secretary, Thumps up Workers Union refusing to register the trade union of Thumps up Trade Union.

10. Shri S. S. Budhwar has come into witness box as MW-1 and made statement that factory had closed in the year, 1986 because the water used was declared unfit. The applicant was given retrenchment compensation,—vide Ex. MS-3. The applicant had refused to take the compensation,—vide report of Ex. MS-4. He also made statement that the factory started its production from November, 1986. He also could not bring him the written comments on the demand notice given by the workman. He also made the statement that the respondent was ready to give the job but the workman was not entitled to work as the premix operator.

11. It is proved from evidence discussed above that the workman was appointed on the job of premixed operator. It is also proved from the statement of S. S. Budhwar and produced documents on record that the respondent factory was ready to take back on the job but the workman was not ready. The learned Authorised Representative for the management made submission that there is no post of premixed operator, the management is unable to take him on the job.

12. It is true that the workman was working on premixed operator. It is also proved that the workman had worked for more than 240 days. It is also proved that the factory was closed in the year 1986 because the water was unhealthy water for drinks. But the workman was ready as he had written letter to the Labour Officer and Labour Inspector that he along with other workers are ready to join the duty but the management had not allowed. It is true that the workman was ready to join the duty. Now the question remains whether there is work of premixed operator or not. Shri S. S. Budhwar made statement that there is no work of premixed operator I will have to go to the admitted statement of S. S. Budhwar because there is no evidence on the side of workman/applicant that there exist post of premixed operator.

13. When the workman was to join the duty as is clear from Ex. W-1, the letter written to the Labour Officer, Rohtak by 23 persons. It is further proved from Ex. W-3 to Ex. W-17 the photo copies of letters made to Labour Officer, Rohtak, S. P., D. C., L. C. that the workman was always ready to join the duty but the management never allowed to him to join the duty. When the workman was ready to join the duty the management not allowed the workman was completed 240 days in a year, he can file claim statement and I accept his reference petition and decide this issue in favour of the workman.

Issues No. 2 and 3 :

14. Both these issues are not pressed or argued by the parties. Hence I decide both these issues against the management.

Issue No. 4 (Relief) :

15. In view of my findings on the above issues, I accept the reference petition and hold that the workman is entitled to the unskilled workman and as premix operator job with continuity of service but with 50% (Fifty) of back wages. The reference is answered and returned accordingly, with no orders as to costs.

P. L. KHANDUJA,

The 21st November, 1994.

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. 2510/reference No. 161—88, dated the 23rd November, 1994.

Forwarded, (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.